
OPINION OF THE PUBLIC ACCESS COUNSELOR

CLIFFORD W. SHEPARD,
Complainant,

v.

WASHINGTON TOWNSHIP/AVON FIRE DEPART-
MENT,
Respondent.

Formal Complaint No.
18-FC-74

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to the formal complaint alleging that the Washington Township/Avon Fire Department (“Department”) violated the Access to Public Records Act¹ (“APRA”). The school district responded to the complaint through Fire Marshal Levi Carpenter. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion

¹ Ind. Code §§ 5-14-3-1 to -10

to the formal complaint received by the Office of the Public Access Counselor on May 11, 2018.

BACKGROUND

Clifford Shepard (“Complainant”), filed a formal complaint alleging the Department violated the Access to Public Records Act (“APRA”) by failing to provide copies of a record within a reasonable time.

On or about April 13, 2018, Complainant submitted a public records request to the Department seeking an opportunity to inspect and copy documents pertaining to an Occupancy Permit for the local International House of Pancakes (“IHOP”) breakfast restaurant. The Department acknowledged the request on May 1 via email. Complainant had not received an update or the records at the time of the filing of his complaint.

The Fire Marshal, upon receipt of the formal complaint, wrote a letter to the Complainant copying this Office. In it, the Marshal contends that any delay was caused by a personnel absence and also provided an explanation of the occupancy determination process. Ultimately, it is the Town of Avon that issues the certificate itself and not the Fire Department. Nonetheless, the Marshal provided the occupancy limit in the letter.

ANALYSIS

1. The Access to Public Records Act (“APRA”)

APRA states that “(p)roviding persons with information is an essential function of a representative government and an

integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” Ind. Code § 5-14-3-1. The Washington Township/Avon Fire Department is a public agency for purposes of APRA; and therefore, subject to its requirements. Ind. Code § 5-14-3-2(n). Thus, any person has the right to inspect and copy the Department’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. Ind. Code § 5-14-3-3(a).

1.1 Request for Occupancy Permit for the Local International House of Pancakes

Under APRA, a public agency may not deny or interfere with the exercise of the right for any person to inspect and copy a public agency’s disclosable public records. Ind. Code § 5-14-3-3(a).

To set the table in regard to this complaint, the APRA dictates that a record must be produced within a reasonable time after a request is made. *Id.* To the extent it exists, a copy of an occupancy permit should be able to be cooked up by a public agency in short order. When it comes to an innocuous single document or a short stack of records, a responsive production of documents is fairly over easy to effectuate. While a menu of exclusions is offered up by the APRA and peppered throughout the Indiana Code, occupancy permits are not an exception to disclosure.

Requesters hungry for information have an expectation that their local government will be efficient in responding to public records request and they will often get salty if a request languishes. Constituents have the right to know

whether their representative officials are being effective stewards of trust and resources and if the juice is worth the squeeze when it comes to supporting or opposing public projects. This is not just syrupy political sentiment to butter up interested members of the public but a cornerstone of our democracy. Also to that end, public employees who are dismissive toward such requests and waffle in regard to their obligations under the law often end up with egg on their face.

While personnel absences are common and provide somewhat of an affirmative defense to non-compliance, better practice would dictate that the Marshal would have had a deputy or staff member to handle public information requests in his stead, to the extent possible. The Department initially scrambled its duties as it pertains to the Public Records Act but the May 11 letter satiated its requirements by fulfilling the information request and directing the requester to the correct agency for the actual occupancy certificate, thereby breaking the fast of information provided.

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt
Public Access Counselor